IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4458 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVINCHANDRA R BRAHMBHATT - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HARESH J TRIVEDI for Applicant(s) : 1,
MS MANISHA SHAH, APP for Respondent(s) : 1,
MR RC JANI for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2006

ORAL JUDGMENT

1.By filing this petition, the petitioner has prayed for quashing the proceedings of Criminal Case No.1700 of 1993 pending before the Judicial Magistrate (First Class), Vijapur, Dist. Mehsana and the process issued thereon by the Learned Magistrate.

2.The respondent No.2 herein has filed the said complaint for the offences punishable under Section 500 and 501(B) of the Indian Penal Code. The said complaint is filed by the Sarpanch of the Village alleging that against the resolution passed by the Panchayat, an appeal was filed by the accused under Section 178 of the Gujarat Panchayat Act in which certain averments have been made, which, according to the complainant-Sarpanch, are derogative. It is averred in the appeal memo that the resolution has been passed by the Panchayat in malafide manner and with oblique motive at the instance of the Sarpanch. In view of the above, the complaint is filed on the ground that some defamatory statements have been made in appeal memo in order to defame

the Sarpanch.

3. Mr. Trivedi, learned Advocate for the applicant submitted that against resolution No.130 passed by the Village Panchayat on 16th February 1993 for recovering special water tax from the Bank, the applicant herein preferred an appeal before the appellate authority. By the said resolution separate tax was sought to be recovered from the Bank, who is tenant of the premises situated within the Panchayat limit. Mr. Trivedi submitted that this complaint is filed on the allegation that some defamatory statements are made in the appeal memo. It is submitted by Mr.Trivedi that by way of challenge to the resolution if a particular point is taken in appeal memo, it cannot be said that it was done with an intention to defame the complainant, who was respondent in appeal. He further submitted that averments made in the appeal memo are general in nature and those averments are made in connection with appeal to the superior authority and there is nothing defamatory in such

averments. It is submitted by him that since the Sarpanch was a defaulter in connection with dues of the bank and since decree was passed against him, he has filed the complaint in question with oblique motive.

4. In my view, when a particular point is taken in appeal memo for challenging the resolution passed by the Panchayat, it cannot be said that it was taken with an intention to defame the complainant-Sarpanch. In order to attack a resolution if any averments are made in appeal memo, it cannot be said that such averments are made with an intention to harm the reputation of the Sarpanch. In my view, it can never be said that a point raised in appeal memo would amount to lower the morale or intellectual character of Sarpanch. Averments made in appeal memo, cannot be said to be made against the complainant in his individual capacity and Mr.Trivedi has rightly submitted that only in order to challenge the resolution of public body, averments are made in appeal memo and there was no

other intention.

5. Considering the nature of the proceedings and facts of the case, in my view, learned Magistrate has issued the process in a mechanical manner, therefore, this application is allowed. Criminal Case No.1700 of 1993 pending in the Court of Judicial Magistrate (First Class) Vijapur, Dist. Mehsana, and process issued thereon is quashed and set aside. Rule is made absolute accordingly.

(P.B.MAJMUDAR,J.)

mrpandya*